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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936 1937

No. 29

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

ANNIE M. PFEIFFER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 15, 1937

CERTIORARI GRANTED MAY 17, 1937

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 895

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

ANNIE M. PFEIFFER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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Before United States Board of Tax Appeals

Docket No. 82616

ANNIE M. PFEIFFER, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

Appearances:

For Taxpayer: Robert A. Young, Esq., Warren W. Grimes, Esq., M. Ward Whalen, Esq., Roger S. Baldwin, Esq.

For Commissioner: Hartford Allen, Esq.

1936

Jan. 4—Petition received and filed. Taxpayer notified. (Fee paid.)

Jan. 6—Copy of petition served on General Counsel.

Feb. 3—Amended petition filed by taxpayer. February 4, 1936, copy served.

Feb. 10—Answer to amended petition and original petition filed by General Counsel.

Feb. 12—Copy of answer served on taxpayer.

Mar. 17—Notice of the appearance of Warren W. Grimes, counsel for taxpayer.

Mar. 26—Notice of the appearance of M. Ward Whalen, counsel for taxpayer.

Apr. 4—Motion to place on Washington Day Calendar April 20, 1936, filed by taxpayer. April 6, 1936, granted.

Apr. 6—Hearing set April 20, 1936.

Apr. 20—Hearing had before Mr. J. E. Murdock, Division 3. Submitted on the merits. Stipulation of facts filed and respondent's Memorandum of Authority. Petitioner's brief due May 11, 1936; five days for reply.

2 Apr. 24—Transcript of hearing April 20, 1936, filed.

May 11—Brief filed by taxpayer (2). Copy served on General Counsel.

May 26—Motion for leave to file Supplemental Brief (Supplemental Brief attached), filed by taxpayer. May 26, 1936, granted. May 29, 1936, copy served on General Counsel.

May 26—Supplemental Brief filed by taxpayer.

June 27—Memorandum Opinion rendered. Mr. J. E. Murdock, Division 3, Decision will be entered under Rule 50.

July 10—Notice of appearance of Roger S. Baldwin as counsel.

July 13—Motion for decision under Rule 50 filed by General Counsel.

July 16—Hearing set August 5, 1936, under Rule 50.

July 18—Consent to settlement filed by taxpayer.
July 22—Decision entered, Mr. J. E. Murdock, Division 3.
July 25—Motion to fix amount of bond at $130,000, filed by taxpayer. July 25, 1936, granted.
July 31—Supersedeas Bond in the amount of $130,000, approved and ordered filed.
July 31—Power of attorney and agreement filed.
Aug. 7—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.
Aug. 7—Proof of service filed by taxpayer.
Aug. 7—Praecipe filed with proof of service thereon.

Before United States Board of Tax Appeals

[Title omitted.]

Amended petition

Filed Feb. 3, 1936

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated December 12, 1935, bearing the following symbols: IT:AR:A-5:WGS-90D, and as a basis of her proceeding, alleges as follows:

1. The petitioner is an individual residing at No. 370 Riverside Drive, New York, New York.

2. The notice of deficiency, a copy of which is attached and marked "Exhibit A", was mailed to the petitioner on December 12, 1935.

3. The taxes in controversy are Federal income taxes for the calendar year 1931 in the amount of $125,660.67.

4. The determination of tax set forth in the said notice of deficiency and the subject of this petition is based upon the following errors:

(a) Respondent erred in determining that the issuance during the year 1931 by William R. Warner Corporation to petitioner of 6,291¼ shares of preferred stock of said Corporation as a dividend upon the common stock of said Corporation then owned by petitioner, did not constitute a tax free stock dividend, and that the sum of $629,125, representing the fair market value of said shares of preferred stock, constituted income of petitioner subject to taxation.

Said determination so made by respondent was and is erroneous for the following reasons, among others:

(1) The issuance of said 6,291¼ shares of preferred stock to petitioner by said William R. Warner Corporation constituted a stock dividend within the meaning of Section 115 (f) of the Revenue Act of 1928 and was not and is not subject to tax.

(2) The issuance of said 6,291¼ shares of preferred stock to petitioner by said William R. Warner Corporation was not a distribution

by said corporation in money or other property out of its earnings or profits accumulated after February 28, 1913, within the meaning of Section 115 (a) of the Revenue Act of 1928.

(3) The receipt by petitioner of said 6,291¼ shares of preferred stock of William R. Warner Corporation did not constitute income within the meaning of the 16th Amendment to the Constitution of the United States and therefore each and every provision of the Revenue Act of 1928 which imposed or purported to impose a
5 tax against the petitioner based on the fair market value of said shares of preferred stock, was and is in violation of the provisions of Article I, Section 2, Clause 3, and of Article I, Section 9, Clause 4, of the Constitution of the United States, in that the Revenue Act of 1928 does not apportion the tax thereby imposed among the several states according to their respective numbers or in proportion to the census or enumeration directed to be taken by said Constitution; and was and is in violation of the provisions of the 5th Amendment to the Constitution which provides, in part, that no person shall be deprived of his property without due process of law.

(b) The respondent further erred in determining that the issuance during the year 1931 by William R. Warner Corporation to the petitioner of said 6,291¼ shares of preferred stock of said Corporation was taxable, for the reason, among other reasons, that the distribution by William R. Warner Corporation of said 6,291¼ shares of preferred stock of said Corporation during the year 1931, and the receipt thereof by the petitioner, was a distribution in pursuance of a plan of reorganization within the meaning of the provisions of Section 112 of the Revenue Act of 1928.

(c) The respondent erred in determining that the sum of $200,000, the proceeds from the sale by petitioner to William R. Warner Corporation of 2,000 shares of preferred stock of said Corporation, was taxable as a dividend under the provisions of Section 115 (g) of the Revenue Act of 1928.

6 The Commissioner erred for the following reasons, among others:

The proceeds of such sale were not essentially equivalent to the distribution of a taxable dividend within the meaning of Section 115 (g) of the Revenue Act of 1928.

The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) William R. Warner Corporation (hereinafter referred to as "Warner Corporation") is a corporation organized in the year 1920 under the laws of the State of Delaware. The original authorized capital stock of the Warner Corporation was $2,300,000, consisting of 3,000 shares of common stock of the par value of $100 per share ($300,000) and 20,000 shares of preferred stock of the par value of $100 per share ($2,000,000). All of such authorized stock was issued for cash or property.